



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 9, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Joseph Tozzi**
Tax Registry No. 948150
62nd Precinct
Disciplinary Case No. 2020-21883

Police Officer William Borques
Tax Registry No. 953694
62nd Precinct
Disciplinary Case No. 2020-22140

The above named members of the service appeared before Assistant Deputy Commissioner Josh Kleiman on August 26, 2021, charged with the following:

DISCIPLINARY CASE NO. 2020-21883

1. Police Officer Joseph Tozzi, on or about September 12, 2019, while assigned to the 62nd Precinct, left unattended and did not monitor, failed to properly safeguard, or failed to properly process a prisoner.

P.G. 208-02

**ARRESTS – REMOVAL TO
DEPARTMENT FACILITY FOR
PROCESSING ARRESTS**

P.G. 208-03

**ARRESTS – GENERAL
PROCESSING ARRESTS**

P.G. 202-21

**POLICE OFFICER
DUTIES AND
RESPONSIBILITIES**

2. Police Officer Joseph Tozzi, on or about September 12, 2019, while assigned to the 62nd Precinct, failed to properly investigate or process the arrest of an individual for operating a motor vehicle while under the influence of alcohol.

P.G. 208-40

**INTOXICATED OR IMPAIRED
DRIVER ARREST ARRESTS**

P.G. 202-21

**POLICE OFFICER
DUTIES AND
RESPONSIBILITIES**

3. Police Officer Joseph Tozzi, on or about September 12, 2019, while assigned to the 62nd Precinct, wrongfully made inaccurate entries in Department records, to wit: Prisoner Roster.

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY –
GENERAL REGULATIONS**

4. Police Officer Joseph Tozzi, on or about November 15, 2019 or February 21, 2020, while assigned to the 62nd Precinct, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer made incomplete, inaccurate, or otherwise misleading statements during an official Department interview relating to a prisoner's intoxication or what he said to a Lieutenant about a prisoner's intoxication.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2020-22140

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P.G. 208-02

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P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated October 26, 2021, Assistant Deputy Commissioner Josh Kleiman found Police Officer Joseph Tozzi guilty of all specifications after having entered a plea of guilty and Police Officer William Borques was found guilty of all specifications after having entered a plea of guilty in Disciplinary Case Nos. 2020-21883 and 2020-22140, respectively.

Having read the Memorandum and analyzed the facts of this matter, I approve the findings for both officers, but disapprove the penalty for Police Officer Tozzi.

I disagree with Assistant Deputy Commissioner Klienman's assessment that Police Officer Tozzi's actions do not warrant a penalty enhancement. Police Officer Tozzi was the arresting officer in this matter and, thus, bore the ultimate responsibility of safeguarding and properly processing the prisoner, both of which he failed to do properly. Police Officer Tozzi also made inaccurate statements on more than one occasion. Further, Police Officer Tozzi made inaccurate entries in the Prisoner Roster. Therefore, due to the overall misconduct committed by Police Officer Tozzi, a period of dismissal probation is clearly warranted.

I have considered the totality of the issues and circumstances in this matter and determined that Police Officer Tozzi shall forfeit forty (40) vacation days and be placed on one (1) year dismissal probation in Disciplinary Case No. 2020-21883.



Dermot Shea
Police Commissioner



POLICE DEPARTMENT

October 26, 2021

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In the Matter of the Charges and Specifications	:	
	:	Case Nos.
- against -	:	
	:	
Police Officer Joseph Tozzi	:	2020-21883
Tax Registry No. 948150	:	
62nd Precinct	:	
	:	
Police Officer William Borques	:	2020-22140
Tax Registry No. 953694	:	
62nd Precinct	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2020-21883

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P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS
PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on August 26, 2021.

Respondents, through their counsel, pleaded Guilty to the subject charges and testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the testimony and evidence in this

matter, I recommend a penalty of the forfeiture of thirty (30) vacation days for Respondent Borques and forty (40) vacation days for Respondent Tozzi.

SUMMARY OF MITIGATION EVIDENCE

It is undisputed that on September 12, 2019, a sixty-seven (67) year old male, while intoxicated, menaced individuals at an adult day care facility with a knife. A call was made to 911 describing the male as possibly intoxicated.¹ He drove away before police arrived. Thereafter, Respondents stopped the male in his vehicle. They spoke with him for approximately 17 minutes before arresting him. None of their inquiries concerned whether he had been drinking or was under the influence of an intoxicant. Respondents transported the male to the 62nd Precinct. During the transport, Respondent Tozzi sat in the backseat of their patrol vehicle with the male and positioned his body worn camera at him. At the precinct, Respondents processed the arrestee for menacing, but not for driving while intoxicated.² (Tr. 17-20, 50-53; Dept. Ex. A at 01:05-18:05, 21:20-23:30; Dept. Ex. 3 at 35)

Police Officer Borques lodged the arrestee in a precinct holding cell at 1453 hours. Leaving the arrestee unattended, Respondents went to conduct an inventory search of the arrestee's car. Upon finishing the inventory search, Respondent Borques asked Respondent Tozzi if he needed any further help and, upon Respondent Tozzi answering in the negative, Respondent Borques, who was performing a 0705x1540 tour of duty, went "upstairs" to prepare

¹ There is no evidence that this description was transmitted over the radio to Respondents.

² According to a Department investigator at Respondent Tozzi's official Department interview, the male had multiple prior DWI arrests (Dept. Ex. 3 at 21).

to go end of tour. Respondent Tozzi, the assigned arresting officer,³ stayed to finish processing the arrest. (Tr. 29, 55-58, Dept. Ex. 3 at 51)

At 1528 hours, and while still unattended, the arrestee tied his socks together, threw them over a pipe, formed a noose, and hung himself from it.⁴ Ninety-two seconds later, two other officers discovered the arrestee. Respondent Tozzi, who was nearby and was alerted, entered the cell, cut the socks with a knife, and brought the arrestee to the ground. The arrestee was unconscious, but still breathing. Upon being transported to the hospital, a blood test revealed a blood alcohol content of .233 (three times the legal limit). Respondent Borques later learned from Respondent Tozzi that the arrestee had tried to hang himself. (Tr. 42, 58; Dept. Ex. 1 at 25-29; Dept. Ex. 2 at 14-15; Dept. Ex. 3 at 51)

Department investigators subsequently discovered that Respondent Tozzi had made inaccurate entries in a prisoner roster, stating that he had visited the arrestee's cell at times (1445 hours and 1500 hours) when he was not present in the prisoner holding pens. At his official Department interview, Respondent Tozzi claimed that he likely made these entries after the incident in order to try to establish a "timeline" from memory of when the prisoner arrived at the precinct and when he was lodged in the cell. Respondent made these timed entries, however, in the portion of the prisoner roster reserved for those guarding prisoners to record their visitation times. (Dept. Ex. 3 at 42-46)

Respondents further made "incomplete, inaccurate, or otherwise misleading statements" during official Department interviews when they told Department investigators, in sum or substance, that they had no reason to believe that the arrestee was intoxicated (Dept. Ex. 1 at 9,

³ Pursuant to Patrol Guide Procedure 208-02, the arresting officer must "[r]emain with prisoner at all times unless relieved by arrest processing officer."

⁴ Socks are not required to be removed from a prisoner before they are placed in a holding cell (Tr. 41).

33-35, 36; Dept. Ex. 2 at 9-10, 18-19; Dept. Ex. 3 at 7, 11-12, 16-21, 23, 31, 35-36, 39).

Respondent Tozzi was further accused of making “incomplete, inaccurate, or otherwise misleading statements” at an official Department interview when he denied telling Lieutenant Trinchese (the Integrity Control Officer) that the arrestee was “heavily intoxicated,” a statement that Lieutenant Trinchese had recorded in a force report he prepared in connection with the incident. (Tr. 10, 64; Dept. Ex. 3 at 33-35)

At their hearing, Respondents did not present mitigating evidence concerning their failure to safeguard the arrestee in the precinct holding cell. Respondent Tozzi further did not present any mitigating testimony concerning the inaccurate entries he made in the prisoner roster. Rather, the testimony and video evidence presented by both Respondents concerned the reasonableness of their failure to process the arrestee as an intoxicated driver and to justify their subsequent statements to Department investigators concerning the lack of indicia of intoxication that they observed. Respondents maintained at their hearing that the arrestee did not appear intoxicated throughout the incident. Instead, they claimed that his demeanor and actions, characterized by occasionally incoherent speech and a shuffling walk, were simply those of an elderly and infirm individual. (Tr. 19, 30-32, 56, 59; Dept. Ex. 1 at 9, 33-36; Dept. Ex. 2 at 7, 11-12, 16-23, 31, 35; Dept. Ex. 3 at 10, 18-19)

Respondents submitted a video (Resp. Ex. A) from Respondent Tozzi’s body worn camera. The 35 minute video captures the arrestee on the day of the incident from the time of the vehicle stop to the time he is lodged in the 62nd precinct holding cell. During the video, the arrestee does not appear to be fall-over drunk; he is able to self-ambulate, understand questions asked of him, and, for the most part, speak coherently (albeit with a thick accent and using broken English). It is also noted on video that the arrestee wears dentures. At times, however, the arrestee does slur his words (*Id.* at 26:29-26:34, 27:50-28:12, 28:31-28:36, 29:22-29:25, 29:28-

29:38, 34:36-34:42, 34:51-34:58). Additionally, while seated next to Police Officer Tozzi in the back of a patrol vehicle for two minutes while being transported to the stationhouse, he is depicted, at times, moaning and speaking to himself. Respondents, on video, do not ask any questions of the arrestee related to alcohol or any other substances.

The Department, at the hearing, further presented arguments that supported Respondents' mitigation arguments. First, the Department stated that it believed that Respondents' behavior evidenced an "absence of intent" in connection with Respondents' misleading statements charges, characterizing the statements made by Respondents as inaccurate statements (Tr. 71, 74). Second, the Department noted that several of Respondents' superiors had been disciplined in connection with the underlying incident (Tr. 7-8). And third, the Department argued in connection with Respondent Tozzi's charge of making an inaccurate entry in a prisoner roster that "no additional penalty" should be applied (Tr. 73). The Department stated that it regarded the inaccurate entry to be minor, in that Respondent Tozzi had only misstated the time the prisoner was lodged by "maybe a few minutes" (*Id.*). The Department further argued that this misconduct should be subsumed for penalty purposes with the specification charging Respondent Tozzi with failing to safeguard a prisoner (*Id.*).

PENALTY

In order to determine appropriate penalties, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines ("Disciplinary Guidelines"), considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record. Respondents' employment histories were also examined (*see* 38 RCNY § 15-07). Information from their personnel records that was considered in making this penalty recommendation is contained in attached memoranda.

Respondent Tozzi, who was appointed to the Department on January 14, 2009, has pled Guilty to failing to properly process a prisoner, failing to investigate the arrest of an individual for operating a motor vehicle while intoxicated, making inaccurate entries in a prisoner roster, and making inaccurate or misleading statements during an official Department interview. In 2015, Respondent Tozzi forfeited five (5) vacation days (*Disciplinary Case No. 2013-10642* [July 24, 2015]) for failing to respond to a radio run of found property and failing to make required entries in his activity log.

Respondent Borques, who was appointed to the Department on January 9, 2013, has pled Guilty to failing to properly process a prisoner, failing to investigate the arrest of an individual for operating a motor vehicle while intoxicated, and making inaccurate or misleading statements during an official Department interview. Respondent Borques has no disciplinary history.

The Department has recommended the same penalty for both Respondents: the forfeiture of thirty (30) vacation days and the imposition of one (1) year Dismissal Probation. Respondents' attorney has recommended a penalty of the forfeiture of fifteen (15) vacation days for each Respondent (Tr. 12).

As the Department noted in closing: "Inaccurate or misleading, this is the crux of the matter here." Both Respondents are charged with making "incomplete, inaccurate, or otherwise misleading statements" at their official Department interview. A chasm exists, however, between statements that are negligently incomplete or inaccurate and those that are intentionally misleading. The Disciplinary Guidelines reflect the enormous distance between these two acts in the presumptive penalties it recommends for their commission (ten penalty days for inaccurate statements versus thirty penalty days and Dismissal Probation for misleading statements).

Contrary to the penalty they recommend, the Department, at the mitigation hearing, insisted that Respondents acted without intent and made only inaccurate statements concerning

the arrestee's level of intoxication. The Disciplinary Guidelines define an inaccurate statement as "[a] statement that the [member] knows, or should know, includes incorrect material information [such that] the member's actions are grossly negligent." A misleading statement, on the other hand, is "[a] statement that is intended to misdirect the fact finder."

In connection with this incident, the Department has charged two other members of the service (Tr. 7-8), including the assigned Desk Officer,⁵ and proceeded against other members informally (Tr. 7), under the theory that the arrestee was obviously intoxicated. The Department further alleged that statements were made to supervisors admitting foreknowledge of the arrestee's intoxication, including by Respondent Tozzi. Such conduct suggests concerted efforts that intimate more deliberative planning than the negligent conduct associated with mere inaccuracies.

This Tribunal, however, has not been presented with proof of collusion or intent. Rather, as to each Respondent, the Tribunal has accepted a guilty plea to a charge that characterizes Respondents' conduct as either negligent ("inaccurate") or intentional ("misleading"), the Department has contended that Respondents did not act intentionally, and Respondents have presented testimony, accompanied by a video, which is consistent with a finding that their conduct was not intentional. Accordingly, the Tribunal accepts the Departments' characterization of Respondents' statements as inaccurate statements, rather than misleading statements.

At their mitigation hearing, Respondents did not meaningfully accept responsibility for their actions, at times claimed not to recall key details, and testified in a self-interested manner

⁵ *Disciplinary Case No. 2020-21882* [July 19, 2021] [The Desk Officer, a fourteen year Sergeant with no prior formal disciplinary history, forfeited fifteen (15) vacation days for (a) failing to properly supervise the arrest processing of the arrestee, and (b) making a command log entry that he had conducted a cell inspection when he had not done so. The Police Commissioner disapproved a prior negotiated penalty of the forfeiture of twenty-five (25) vacation days.].

(Tr. 31-32, 38-39, 42, 56, 59). Respondents' testimony, and accompanying video, aimed toward convincing the Tribunal that Respondents had no reason to believe the arrestee was intoxicated not only contradicted their guilty pleas, but failed to convince the Tribunal that they understood their wrongdoing.

Even if the officers had believed that the arrestee's behavior was related to his age or infirmities, it was unreasonable for the officers to fail to make any inquiries of the arrestee related to possible intoxication in order to support their assumption that his behavior was not substance-related. Nevertheless, Respondents' conduct included more than mere failures to make reasonable inquiries; they further pled guilty to making misrepresentations at their official Department interviews concerning the indicia of intoxication that they had observed. Yet, their testimony admitted no specific misrepresentations and made no efforts to accept responsibility for their actions. Accordingly, the Tribunal is not convinced that the mitigated penalties set forth in the Disciplinary Guidelines should apply here.

The presumptive penalty for making "inaccurate" statements is ten (10) penalty days, with an aggravated penalty of fifteen (15) penalty days and a mitigated penalty of five (5) penalty days. As the Department explained at the hearing and claimed was relevant here, the Disciplinary Guidelines authorize the issuance of a Schedule "B" Command Discipline (BCD) for failing to safeguard a prisoner where there is no prisoner escape (Tr. 70). A BCD may be accompanied by a vacation day forfeiture of between one (1) and ten (10) days. The logic, however, of applying a BCD-equivalent penalty where the unattended prisoner has attempted suicide is faulty. The officer's neglect may be the same as in a case in which no harm results, but the penalties are different because disciplinary penalties factor for the degree of resulting harm to the Department and the public it serves. The presumptive penalty under the Disciplinary Guidelines for the failure to safeguard a prisoner resulting in an escape is twenty (20) penalty

days, with a mitigated penalty of ten (10) penalty days and an aggravated penalty of thirty (30) penalty days. The public harm attendant to a suicide attempt is no less serious than that accompanying a prisoner escape. And the Department has, in the past, delivered equivalent penalties in cases of prisoner suicide.⁶

The Tribunal disagrees with the parties that Respondent Borques and Respondent Tozzi are deserving of the same penalty. Unlike Respondent Tozzi, Respondent Borques was not accused of inaccurately stating that he visited the arrestee in the holding pens or denying having made a statement to a supervisor admitting the arrestee's intoxication. Additionally, unlike Respondent Tozzi, Respondent Borques has no disciplinary history.

The Tribunal further does not accept the Department's position that Respondent Tozzi's inaccurate entries in the prisoner roster should result in "no additional penalty." The Department's characterization of Respondent Tozzi's inaccurate entries as merely misstating the time the arrestee was lodged in the holding cell by a "few minutes" is contrary to the evidence. As made clear at Respondent Tozzi's official Department interview, he entered two times, 1445 and 1500, in the portion of the prisoner roster reserved for those guarding prisoners to make entries documenting their presence in the holding pens. Respondent Tozzi admitted that he was not present in the holding cells during these times. Indeed, he was not present in the holding cells at all during the duration of the arrestee's presence at the precinct until the arrestee was found hanging by his socks.

Upon being questioned about his entries in the prisoner roster at his Department interview, Respondent Tozzi stated that he may have made these entries after the arrestee was

⁶ See, *Disciplinary Case No. 79665/04* [January 10, 2005] [Eighteen-year police officer forfeited twenty (20) vacation days wherein the arresting officer left a prisoner unattended in a holding cell in order to complete arrest paperwork in an adjacent room; despite checking on the prisoner more than once, the prisoner committed suicide by hanging himself using a fleece shirt. The Police Commissioner disapproved the hearing officer's suggested penalty of the forfeiture of thirty (30) vacation days and the imposition of one (1) year Dismissal Probation].

found hanging in order to create a “timeline” from memory of when the prisoner arrived at the precinct and when he was lodged into the cell (Dept. Ex. 3 at 42-46). Yet, those entries would not typically be recorded where Respondent made his entries. The Tribunal is especially troubled by Respondent Tozzi’s behavior in connection with this charge. After the significant occurrence of an attempted prisoner suicide, Respondent Tozzi made after-the-fact entries in a record reserved for members of the service assigned to guard prisoners. This act is not one so insignificant to be ignored for purposes of recommending an appropriate penalty in this matter.

Accordingly, the Tribunal recommends that Respondent Borques forfeit twenty (20) penalty days for failing to safeguard a prisoner and ten (10) penalty days for failing to make accurate statements at an official Department interview. The Tribunal further recommends that Respondent Tozzi forfeit twenty (20) penalty days for failing to safeguard a prisoner, ten (10) penalty days for failing to make accurate statements at an official Department interview, and ten (10) penalty days for making inaccurate entries in a Prisoner Roster following a prisoner’s suicide attempt. The Tribunal finds that the overall penalties recommended in this matter are adequate to address Respondents’ misconduct of failing to investigate a potential DWI.

None of the penalties associated with the categories of misconduct with which Respondents are charged recommend the imposition of Dismissal Probation, even as an aggravated penalty. Additionally, Respondent Tozzi’s disciplinary history does not meet the requirements for any required progressive discipline enhancements under the Disciplinary Guidelines. Accordingly, the Tribunal agrees with Respondents that the recommended penalty should not include Dismissal Probation.

Given the totality of the circumstances, and in accordance with Disciplinary Guidelines, the Tribunal recommends that Respondent Borques forfeit thirty (30) vacation days and that Respondent Tozzi forfeit forty (40) vacation days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Kleiman", written in a cursive style.

Josh Kleiman
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JOSEPH TOZZI
TAX REGISTRY NO. 948150
DISCIPLINARY CASE NO. 2020-21883

Respondent was appointed to the Department on January 14, 2009. On his last three annual performance evaluations, he received overall ratings of “Exceeds Expectations” in 2020 and “Exceptional” in 2018 and 2019. He has been awarded six medals for Excellent Police Duty and one medal for Meritorious Police Duty.

In 2015, Respondent forfeited five vacation days after pleading guilty to (i) failing to respond to a radio run of found property as part of an integrity test and (ii) failing to make proper activity log entries.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER WILLIAM BORQUES
TAX REGISTRY NO. 953694
DISCIPLINARY CASE NO. 2020-22140

Respondent was appointed to the Department on January 9, 2013. On his last three annual performance evaluations, he received overall ratings of “Exceeds Expectations” for 2018, 2019 and 2020.

Respondent has no disciplinary history.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials